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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CHINA CENTRAL TELEVISION, a China  
company; CHINA INTERNATIONAL  
COMMUNICATIONS CO., LTD., a China  
company; TVB HOLDINGS (USA), INC., a  
California corporation; and DISH  
NETWORK L.L.C., a Colorado corporation,  
Plaintiffs,

vs.

CREATE NEW TECHNOLOGY (HK)  
LIMITED, a Hong Kong company; HUA  
YANG INTERNATIONAL TECHNOLOGY  
LIMITED, a Hong Kong company;  
SHENZHEN GREATVISION NETWORK  
TECHNOLOGY CO. LTD., a China  
company; CLUB TVPAD, INC., a California  
corporation; BENNETT WONG, an  
individual; ASHA MEDIA GROUP INC.  
d/b/a TVPAD.COM, a Florida corporation;  
AMIT BHALLA, an individual;  
NEWTVPAD LTD. COMPANY d/b/a  
NEWTVPAD.COM a/k/a TVPAD USA, a  
Texas corporation; LIANGZHONG ZHOU,  
an individual; HONGHUI CHEN d/b/a E-  
DIGITAL, an individual; JOHN DOE 1 d/b/a  
BETV; JOHN DOE 2 d/b/a YUE HAI; JOHN  
DOE 3 d/b/a 516; JOHN DOE 4 d/b/a HITV;  
JOHN DOE 5 d/b/a GANG YUE; JOHN  
DOE 6 d/b/a SPORT ONLINE; JOHN DOE 7  
d/b/a GANG TAI WU XIA; and JOHN DOES  
8-10,

Defendants.

Case No.  
**CV 15-1869 SVW (AJWx)**

**NOTICE OF MOTION AND  
MOTION TO HOLD THIRD  
PARTIES AZURE  
TECHNOLOGY CO., LTD.;  
ZERO DDOS LLC; AND  
CLEARDDOS  
TECHNOLOGIES IN  
CONTEMPT**

[[Proposed] Order and  
Declarations of Wukoson and  
Braak submitted concurrently]

Date: November 27, 2017  
Time: 1:30 p.m.  
Courtroom: 10A  
Judge: Hon. Stephen V.  
Wilson

Complaint Filed: March 13, 2015

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on November 27, 2017 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 10A of the Honorable Stephen V. Wilson, located at 350 W. 1st Street, 10<sup>th</sup> Floor, Los Angeles, California, Plaintiffs China Central Television, China International Communications Co., Ltd., TVB Holdings (USA), Inc., and DISH Network L.L.C. (collectively “Plaintiffs”) will and hereby do move this Court to hold the third-party internet service providers Azure Technology Co., Ltd. (“Azure Tech”), ZERO DDOS LLC (“Zero DDOS”), and ClearDDoS Technologies (“Clear DDOS”) (collectively, the “Non-Compliant ISPs”) in contempt of this Court’s Second Amended Order Granting Plaintiffs’ Motion for Default Judgment and Permanent Injunction [ECF No. 214] (the “Permanent Injunction Order”).

As set forth in the accompanying declarations and memorandum of points and authorities, Plaintiffs are entitled to an order finding the Non-Compliant ISPs in willful contempt of the Permanent Injunction Order since each of the Non-Compliant ISPs received actual notice of the Permanent Injunction Order no later than May 22, 2017, and yet each of the Non-Compliant ISPs has refused to obey the Permanent Injunction Order. Specifically, in violation of the Permanent Injunction Order, each of the Non-Compliant ISPs continues to host digital content used by Defendants Create New Technology (HK) Limited and Hua Yang International Technology Limited (“Defendants”) and other Enjoined Parties<sup>1</sup> to infringe Plaintiffs’ copyrighted TV programming.

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<sup>1</sup> As defined in the Permanent Injunction Order, the “Enjoined Parties” are Defendants, and all of their parents, subsidiaries, affiliates, officers, agents, servants and employees, and all those persons or entities acting in active concert or participation with Defendants (including but not limited to parties that procure or provide sales, distribution, shipping or logistics services, primary and backup storage services, or web, server or file hosting services on behalf of Defendants, including but not limited to those parties listed in Exhibits C and D to the Permanent Injunction

1 Accordingly, Plaintiffs seek entry of an order (the “Compliance Order”) (a)  
2 holding each of the Non-Compliant ISPs in contempt of court; (b) directing that each  
3 Non-Compliant ISP promptly comply with the Permanent Injunction Order; (c)  
4 assessing against each of the Non-Complaint ISPs the attorneys’ fees and costs  
5 Plaintiffs have incurred in making this motion; and (d) directing that any Non-  
6 Compliant ISP that fails to comply with the Permanent Injunction Order within five  
7 (5) court days of receiving notice of the Compliance Order shall pay to the Court a  
8 fine of \$1,000 per day until such time as that Non-Compliant ISP complies with the  
9 Permanent Injunction Order.

10 As detailed in the attached declarations and exhibits, counsel for Plaintiffs  
11 informed all the Non-Compliant ISPs that their failure to comply with the Permanent  
12 Injunction Order could result in Plaintiffs potentially seeking relief from the Court  
13 and their being held in contempt. Two of the Non-Compliant ISPs originally  
14 responded to Plaintiffs’ communications, but have since stopped responding to  
15 Plaintiffs’ communications entirely. One of the Non-Compliant ISPs never  
16 responded to Plaintiffs’ communications. Thus, counsel for Plaintiffs have been  
17 unable to conduct a conference of counsel pursuant to L.R. 7-3.

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28 Order) and all persons and entities who receive actual notice of the Permanent  
Injunction Order. (Permanent Injunction Order at 5, ¶ 9.)

1 This Motion is based upon this Notice, the Memorandum of Points and  
2 Authorities, the Declarations of George P. Wukoson and Nicholas Braak, Exhibits 1  
3 through 26, and any additional evidence and arguments as may be presented at or  
4 before any hearing on this matter.

5 DATED: October 17, 2017

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9 By: /s/Sean M. Sullivan  
10 Sean M. Sullivan

11 Attorneys for Plaintiffs  
12 CHINA CENTRAL TELEVISION; CHINA  
13 INTERNATIONAL COMMUNICATIONS CO.,  
14 LTD.; TVB HOLDINGS (USA), INC.; AND  
15 DISH NETWORK L.L.C.  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

As this Court knows, this lawsuit concerns massive ongoing copyright and trademark infringement by Defendants, who develop, sell, and operate infringing software applications (“Infringing Apps”) on set-top box devices known as TVpad and blueTV, and who transmit infringing video of Plaintiffs’ copyrighted television programs to those Infringing Apps over the internet. Defendants could not accomplish any of this infringement without using the services of numerous third-party internet service providers (“ISPs”). Defendants particularly rely on third parties to host their infringing content and provide other related data storage and delivery services. These third party ISPs provide the servers and connections that Defendants must use to store and deliver infringing streaming video and updates to the Infringing Apps, among other things. For this reason, the Permanent Injunction Order (and an earlier Preliminary Injunction) granted by this Court [ECF No. 214] contains provisions that expressly prohibit ISPs and other third parties who receive notice from providing hosting services for the infringing content. While the Defendants have defaulted and have flagrantly ignored and violated this Court’s injunctions, Plaintiffs have obtained largely effective enforcement of this Court’s injunctions by serving them on third party ISPs.

Although most third-party ISPs have obeyed this Court’s injunctions, the Non-Compliant ISPs—Azure Tech, Zero DDOS, and Clear DDOS—have continually ignored and refused to comply with those injunctions. These Non-Compliant ISPs have been given ample and repeated notice of the Preliminary Injunction and the Permanent Injunction Order, and have taken zero steps to comply with them. Instead, the Non-Compliant ISPs have responded to Plaintiffs by merely stating that they have informed their customers—Defendants and other Enjoined Parties—of Plaintiffs’ demands for compliance. When Plaintiffs have patiently explained to the



1 Non-Compliant ISPs that this does not satisfy the injunctions, the Non-Compliant  
2 ISPs have responded with silence and evasion. The Non-Compliant ISPs have thus  
3 plainly and willfully refused to accord any respect to this Court and its orders. The  
4 Court should therefore enter the Compliance Order, holding the Non-Compliant ISPs  
5 in contempt, directing that they immediately comply, awarding Plaintiffs their  
6 attorneys' fees in making this motion, and fining the Non-Compliant ISPs \$1,000 per  
7 day in the event of further non-compliance.

## 8 II. FACTUAL BACKGROUND

9 On June 11, 2015, this Court issued a Preliminary Injunction [ECF No. 98]  
10 ("Preliminary Injunction"). Thereafter, the Court also issued a series of permanent  
11 injunctions (each amending the last) against the Defendants (who manufacture the  
12 TVpad device and a Comparable System<sup>2</sup> known as the blueTV device) and other  
13 Enjoined Parties culminating in the Permanent Injunction Order, issued on May 10,  
14 2017 [ECF No. 214].

15 The Permanent Injunction Order permanently enjoins Defendants and other  
16 Enjoined Parties from, among other things: distributing and advertising TVpad  
17 devices and blueTV devices; distributing and advertising Infringing TVpad Apps and  
18 similarly infringing blueTV apps; providing or controlling servers hosting infringing  
19 copies of Plaintiffs' copyrighted TV programming; technologically assisting with  
20 streaming of infringing copies of Plaintiffs' copyrighted TV programming; and  
21 otherwise infringing Plaintiffs' rights in their copyrighted TV programming.  
22 (Permanent Injunction Order at 5–7, ¶ 9.) The Permanent Injunction Order also  
23 permanently enjoins Defendants and other Enjoined Parties from encouraging or  
24 soliciting others to: transmit, reproduce, or offer transmissions of Plaintiffs'

25  
26 <sup>2</sup> As defined in the Permanent Injunction Order, a "Comparable System"  
27 means any device, data transmission service or application that provides users  
28 unauthorized access to Plaintiffs' copyrighted programming, using any peer to peer  
or internet based transmission, file sharing or content delivery technology, including  
but not limited to the blueTV device. Permanent Injunction Order at 3, ¶ 1(g).

1 copyrighted TV programming; or upload, post, or index any files that constitute or  
2 point to Plaintiffs' copyrighted TV programming. (Permanent Injunction Order at 7,  
3 ¶ 10.)

4 Recognizing that Defendants conduct their internet-based infringing activities  
5 through the use of third-party ISPs, the Permanent Injunction Order also contains  
6 provisions that expressly enjoin ISPs and other third parties who receive notice of the  
7 Permanent Injunction Order. These provisions state as follows:

8 "Third parties providing web, server and file hosting services, data center and  
9 colocation services, and primary and backup storage services (including but  
10 not limited to cloud storage services) used in connection with the activities  
11 enjoined . . . hereinabove, including but not limited to the third parties  
12 providing hosting services for the Internet servers identified in **Exhibit C**  
13 hereto (including but not limited to servers providing streaming video,  
14 application files, TVpad Store functionality, and TVpad Device initialization,  
operation and authentication) and who receive actual notice of this Order, are  
immediately and permanently enjoined from providing such hosting services  
to (i) any Enjoined Parties in connection with the activities enjoined . . .  
hereinabove; (ii) any server, IP address, domain name or website used in  
conjunction with the TVpad Device, Infringing TVpad Apps or any  
Comparable System; and (iii) the TVpad Websites.

15 Third parties providing services used in connection with the activities enjoined  
16 . . . hereinabove, including but not limited to back-end service providers,  
17 service providers routing traffic or providing bandwidth, content delivery  
18 networks and domain name server systems (including but not limited to  
19 CloudFlare and DNSPod), search-based online advertising services (such as  
20 through paid inclusion, paid search results, sponsored search results, sponsored  
21 links, and Internet keyword advertising), domain name registration privacy  
22 protection services, providers of social media services (including but not  
23 limited to Facebook and Twitter), user generated and online content services  
(including but not limited to YouTube) and data security services (including  
but not limited to denial-of-service attack prevention, firewall and proxy  
services), who receive actual notice of this Order are permanently enjoined  
from providing such services to: (i) any Enjoined Parties in connection with  
the activities enjoined . . . hereinabove; (ii) any server, IP address, domain  
name or website used in conjunction with the TVpad Device, Infringing  
TVpad Apps or any Comparable System; and (iii) the TVpad Websites."

24 (Permanent Injunction Order at 9–10, ¶¶ 16–17 (emphasis in original).)

25 The Permanent Injunction Order explicitly identifies Azure Tech, Zero DDOS,  
26 and Clear DDOS in Exhibit C. (Permanent Injunction Order Ex. C.)

Each of these Non-Compliant ISPs has received repeated notices of the Permanent Injunction Order, and in some cases prior injunctions in this action, as follows:

On October 12, 2015, Plaintiffs sent Clear DDOS a copy of the Preliminary Injunction, notified Clear DDOS of the terms of the Preliminary Injunction binding on it, and requested that Clear DDOS cease providing hosting services to the Enjoined Parties in connection with their infringing activities. (Declaration of George P. Wukoson (“Wukoson Decl.”), dated October 12, 2017 ¶ 7.) A “Nico Zheng” responded to say only, “We have inform user to check, thanks.” (*Id.* ¶ 8.) When Plaintiffs reiterated in writing that this Court’s Preliminary Injunction required that Clear DDOS cease providing services to the Enjoined Parties, Mr. Zheng responded evasively and refused to comply:

“We will fully assist for your request. However, we have no idea about the clients content if there's any copyright issue. And we also has contract and SLA with the client. So its [sic] not that easy for us to simply shutdown all their service just based your email notice. We will escalate this issue to the client, hopefully to get this issue be fixed asap.”

(*Id.* ¶ 9.) Plaintiffs sent Mr. Zheng another demand that Clear DDOS comply with the Preliminary Injunction, but Clear DDOS did not respond. (*Id.*)

On May 22, 2017, Plaintiffs sent Clear DDOS a copy of the Permanent Injunction Order, notified Clear DDOS of the terms of the Permanent Injunction Order binding on it, and requested that Clear DDOS cease providing hosting services to the Enjoined Parties in connection with their infringing activities. (*Id.* ¶ 10.) Even though Plaintiffs addressed this May 2017 correspondence to the same email and physical addresses as Plaintiffs’ prior correspondence that elicited a response from Mr. Zheng, Clear DDOS entirely ignored this May 2017 correspondence, follow-up correspondence from Plaintiffs, and the Court’s Permanent Injunction Order. (*Id.* ¶¶ 10–11.)

Azure Tech is the alter ego of a company called Cloud DDOS Technology Co., Limited (“Cloud DDS”). (Declaration of Nick Braak (“Braak Decl.”), dated

1 October 12, 2017, ¶ 7.) On October 12, 2015, Plaintiffs sent Cloud DDOS a copy of  
2 the Preliminary Injunction, notified Cloud DDOS of the terms of the Preliminary  
3 Injunction binding on it, and requested that Cloud DDOS cease providing hosting  
4 services to the Enjoined Parties in connection with their infringing activities.  
5 (Wukoson Decl. ¶ 14.) Nico Zheng also responded to this email to similarly state,  
6 “we have inform our user to check, thanks.” (*Id.* ¶ 15.) In response, Plaintiffs sent an  
7 email to Mr. Zheng to reiterate that Cloud DDOS could not comply with the  
8 Preliminary Injunction merely by notifying its customers of it. (*Id.*)

9 On May 22, 2017, Plaintiffs sent Azure Tech a copy of the Permanent  
10 Injunction Order, notified Azure Tech of the terms of the Permanent Injunction Order  
11 binding on it, and requested that Azure Tech cease providing hosting services to the  
12 Enjoined Parties in connection with their infringing activities. (*Id.* ¶ 16.) Having  
13 received no response, Plaintiffs sent follow-up emails to Azure Tech in June and July  
14 2017, again demanding that Azure Tech comply with the Permanent Injunction Order  
15 and notifying Azure Tech of additional IP addresses of Azure Tech servers the  
16 Enjoined Parties were using to carry out their infringement. (*Id.* ¶ 17.) Azure Tech’s  
17 only response was to state it had notified its users of the issue. (*Id.* ¶ 18.) When  
18 Plaintiffs once again informed Azure Tech that it was clearly violating the Permanent  
19 Injunction Order, Azure Tech did not respond. (*Id.* ¶ 19.)

20 On October 12, 2015, Plaintiffs sent Zero DDOS a copy of the Preliminary  
21 Injunction, notified Zero DDOS of the terms of the Preliminary Injunction binding on  
22 it, and requested that Zero DDOS cease providing hosting services to the Enjoined  
23 Parties in connection with their infringing activities. (*Id.* ¶ 21.) Zero DDOS never  
24 responded to this letter. (*Id.*) On May 22, 2017, Plaintiffs sent Zero DDOS a copy of  
25 the Permanent Injunction Order, notified Zero DDOS of the terms of the Permanent  
26 Injunction Order binding on it, and requested that Zero DDOS cease providing  
27 hosting services to the Enjoined Parties in connection with their infringing activities.  
28 (*Id.* ¶ 22.) Plaintiffs received confirmations that this May 22<sup>nd</sup> letter was delivered to

1 Zero DDOS. (*Id.* ¶ 22, Exs. 25-26.) Having received no response, Plaintiffs then sent  
2 a follow-up email to Zero DDOS on June 1, 2017. (*Id.* ¶ 23.) Zero DDOS has never  
3 responded to any of Plaintiffs' correspondence. (*Id.* ¶ 19.)

4 From July through September 2017, Plaintiffs' investigator Nicholas Braak  
5 tested several TVpad and blueTV devices to determine which, if any, third party ISPs  
6 were still hosting digital content used by the TVpad and blueTV devices and their  
7 Infringing Apps to stream infringing video of Plaintiffs' copyrighted TV  
8 programming. (Braak Decl. ¶ 5, Ex. 2.) During this period, Mr. Braak's testing  
9 consistently showed that, despite having received the Permanent Injunction orders,  
10 each of the Non-Compliant ISPs is continuing to host digital content used by the  
11 TVpad and blueTV devices and their Infringing Apps to stream infringing video of  
12 Plaintiffs' copyrighted TV programming. (*Id.* ¶ 6, Ex. 2.)

13 In sum, Plaintiffs have given Clear DDOS, Azure Tech, and Zero DDOS  
14 repeated and ample notice of the Permanent Injunction Order and earlier injunctions  
15 entered in this action. Despite having received repeated notices of this Court's  
16 Permanent Injunction Order, the Non-Compliant ISPs continue to host infringing TV  
17 content for the Enjoined Parties in flagrant violation of the Permanent Injunction  
18 Order.

### 19 III. ARGUMENT

20 A finding of contempt against the Non-Compliant ISPs and imposition of  
21 coercive penalties and attorneys' fees is clearly warranted.

#### 22 A. Standard for Determining Civil Contempt.

23 "A court has wide latitude in determining whether there has been  
24 contemptuous defiance of its order." *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir.  
25 1984). "Civil contempt occurs when a party disobeys a specific and definite court  
26 order by failing to take all reasonable steps within its power to comply." **BOLDFACE**  
27 *Licensing + Branding v. By Lee Tillett, Inc.*, No. 12 Civ. 10269 (ABC) (PJWX),  
28 2014 WL 12558005, at \*3 (C.D. Cal. Mar. 20, 2014).

1 “The party moving for contempt bears the burden of establishing by clear and  
2 convincing evidence that the contemnor has violated a specific and definite order of  
3 the court.” *Bademyan v. Receivable Management Services Corp.*, Case No. CV 08-  
4 00519 MMM (RZx), 2009 WL 605789, at \*2 (C.D. Cal. Mar. 9, 2009) (citing  
5 *Wolfard Glassblowing Co. v. Vanbragt*, 118 F.3d 1320, 1322 (9th Cir. 1997); *Balla*  
6 *v. Idaho State Bd. of Corrections*, 869 F.2d 461, 466 (9th Cir. 1989)). “Once the  
7 moving party shows by clear and convincing evidence that the contemnor has  
8 violated a specific and definite order of court, the burden shifts to the contemnor to  
9 demonstrate that he or she took every reasonable step to comply, and to articulate  
10 reasons why compliance was not possible.” *Bademyan*, 2009 WL 605789, at \*2  
11 (citing *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983)). “Intent is not an  
12 issue in civil contempt proceedings. The sole question is whether a party complied  
13 with the district court’s order.” *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir.  
14 1983) (internal citations omitted).

15 **B. Plaintiffs Have Produced Clear and Convincing Evidence of the**  
16 **Non-Compliant ISPs’ Wholesale Failure to Comply with This**  
17 **Court’s Permanent Injunction Order.**

18 Notwithstanding the clear terms of the Court’s Permanent Injunction Order  
19 explicitly binding the Non-Compliant ISPs, the Non-Compliant ISPs have taken  
20 absolutely no steps to comply. Despite having received notice of the Court’s  
21 Permanent Injunction Order more than three months ago (and having similarly  
22 received notice of the Preliminary Injunction over 11 months ago), the Non-  
23 Compliant ISPs have knowingly refused to cease providing services to the Enjoined  
24 Parties, as both Injunctions require they do. To this day, the Non-Compliant ISPs all  
25 continue to violate the provisions of the Permanent Injunction Order that bind them.  
26 The Non-Compliant ISPs’ total failure to comply with the Court’s Permanent  
27 Injunction Order cannot be explained by good faith or any reasonable interpretation  
28 of the Permanent Injunction Order, and, as such, a finding of civil contempt is  
appropriate.



1  
2  
3 **1. The Court's Permanent Injunction Order Is Clear and**  
4 **Definite.**

5 The Court's Permanent Injunction Order in this matter is clear and not  
6 susceptible to any reasonable interpretation that would explain the Non-Compliant  
7 ISPs' failure to take any steps to comply with the Permanent Injunction Order.  
8 *Wolfard Glassblowing*, 118 F.3d at 1322. As it applies to the Non-Compliant ISPs,  
9 the Permanent Injunction Order sets forth a simple directive: upon receiving notice  
10 of the Permanent Injunction Order, the Non-Compliant ISPs must cease providing  
11 hosting services to the Enjoined Parties. (Permanent Injunction Order at 9–10, ¶¶  
12 16–17.) The Permanent Injunction Order even includes a list (Exhibit C) of the  
13 precise IP addresses of servers owned or controlled by the Non-Compliant ISPs that  
14 the Enjoined Parties are using to host content used in conjunction with their enjoined  
15 infringing activities. There is nothing in the Permanent Injunction Order that is in  
16 any way unclear regarding what the Non-Compliant ISPs must do to comply with the  
17 Permanent Injunction Order.

18 **2. The Non-Compliant ISPs Received Notice of the Permanent**  
19 **Injunction Order, But They Have Failed and/or Refused to**  
20 **Remove or Disable Infringing Content Used by the Enjoined**  
21 **Parties.**

22 Despite being permanently enjoined from doing so, Defendant Create New  
23 Technology (HK) Limited ("CNT") has brazenly continued to transmit Plaintiffs'  
24 copyrighted television programs through Infringing Apps on the TVpad and blueTV  
25 devices. For this reason, this Court found CNT in contempt and imposed a coercive  
26 fine and award of attorneys' fees against it. [ECF No. 140] However, because  
27 Defendant CNT is located in China and geographically outside of the Court's reach,  
28 it has continued to flout the Court's Permanent Injunction Order. CNT and the other  
Enjoined Parties have been able to continue to operate the Infringing Apps on the  
TVpad and blueTV devices due to the intransigence of the Non-Compliant ISPs.

1 Plaintiffs have given the Non-Compliant ISPs ample and frequent notice of the  
2 Permanent Injunction Order and the prior Preliminary Injunction Order, highlighting  
3 the terms of the order that require the Non-Compliant ISPs to cease providing content  
4 hosting services to the Enjoined Parties and painstakingly explaining the binding  
5 nature of these Injunctions to the Non-Compliant ISPs. Despite Plaintiffs' careful  
6 explanations, the Non-Compliant ISPs have stubbornly refused to comply with the  
7 injunctions.

8 **C. The Non-Compliant ISPs' Refusal to Obey the Court's Permanent**  
9 **Injunction Order Merits A Finding of Contempt, and Imposition of**  
10 **Coercive Sanctions for Continued Non-Compliance.**

11 Once a violation of a court order has been shown, civil contempt sanctions  
12 may be imposed. Civil contempt sanctions are employed "to coerce the defendant  
13 into compliance with the court's order." *Whittaker Corp. v. Execuair Corp.*, 953 F.2d  
14 510, 517 (9th Cir. 1992); *see also Citizens for Lawful and Effective Attendance*  
15 *Policies v. Sequoia Union High School District*, No. C 87-3204 MMC, 1998 WL  
16 305513, at \*4 (N.D. Cal. June 4, 1998).

17 Civil coercive sanctions by their very nature are "conditional"—meaning "they  
18 only operate if and when the person found in contempt violates the order in the  
19 future." *Id.* (internal citation omitted). Civil contempt sanctions that are coercive in  
20 nature are paid to the district court. *See General Signal Corporation v. Donallco,*  
21 *Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986). "A court, in determining the size and  
22 duration of a coercive fine, must 'consider the character and magnitude of the harm  
23 threatened by continued contumacy, and the probable effectiveness of any suggested  
24 sanction in bringing about the result desired.'" *Whittaker*, 953 F.2d at 516 (citing  
25 *United States v. United Mine Workers of America*, 330 U.S. 258, 304 (1947)).

26 Compensatory sanctions, in contrast, are paid to the party bringing the civil  
27 contempt motion and are intended to compensate for losses suffered as a result of the  
28 contemptuous conduct. *Portland Feminist Women's Health Center v. Advocates for*  
*Life, Inc.*, 877 F.2d 787, 790 (9th Cir. 1989). Such compensatory sanctions may



1 include plaintiffs' costs to bring the contempt proceeding, including reasonable  
2 attorney's fees. *Id.*

3 **1. A \$1,000 Daily Coercive Fine is Appropriate.**

4 The Non-Compliant ISPs have shown disdain for this Court's Permanent  
5 Injunction Order, and have taken no steps to comply. The Non-Compliant ISPs'  
6 refusal to obey the Permanent Injunction Order empowers the Enjoined Parties to  
7 continue infringing Plaintiffs' copyrights in violation of the Permanent Injunction  
8 Order through use of the Non-Compliant ISPs' services. As a result, the massive  
9 infringement of Plaintiffs' copyrighted TV programs continues unabated on a daily  
10 basis, notwithstanding entry of injunctive relief.

11 Such brazen disregard for this Court's Permanent Injunction Order and the  
12 serious harm being suffered by Plaintiffs requires a significant coercive sanction of  
13 \$1,000 per day for every day that the Non-Compliant ISPs fail to comply. Such a fine  
14 is consistent with other coercive sanctions imposed in this Circuit. *See HM Elecs.,*  
15 *Inc. v. R.F. Techs., Inc.*, No. 12CV2884-BAS (MDD), 2014 WL 12102169, at \*2  
16 (S.D. Cal. Dec. 16, 2014) (recommending imposition of \$1,000 daily coercive fine  
17 on non-parties for contempt of court order); *Fed. Trade Comm'n v. Productive Mktg.,*  
18 *Inc.*, 136 F. Supp. 2d 1096, 1112 (C.D. Cal. 2001) (imposing over \$16,000  
19 compensatory fine plus daily fine of \$50, doubling every subsequent day of non-  
20 compliance, on non-party for contempt of court order).

21 **2. An Award of Attorneys' Fees is Appropriate**

22 The Non-Complaint ISPs' disregard for this Court's Permanent Injunction  
23 Order also warrants a compensatory sanction of assessing against each of the Non-  
24 Compliant ISPs attorneys' fees and costs incurred by Plaintiffs in making this  
25 motion. "The Ninth Circuit has held that a court may sanction a contemnor by  
26 ordering that she pay a party's attorneys' fees and costs." *Bademyan*, 2009 WL  
27 605789 at \*4 (citing *Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc.*, 539 F.3d  
28 1039, 1042 (9th Cir. 2008)). "Where the moving party has incurred time and expense

1 in bringing a motion to enforce compliance with a court order, and the contemnor has  
2 taken no steps to comply with the terms of the court's order, an attorneys' fees award  
3 is particularly appropriate." *China Cent. Television v. Create New Tech. (HK) Ltd.*,  
4 No. CV151869MMAJWX, 2015 WL 6755188, at \*7 (C.D. Cal. Nov. 4, 2015)  
5 [ECF No. 140] (this Court previously held CNT in contempt and awarded attorneys'  
6 fees against CNT in the amount of \$34,680.60).

7 Plaintiffs request that the Court assess against the Non-Compliant ISPs the  
8 attorneys' fees and costs incurred by Plaintiffs in making this motion and direct that  
9 Plaintiffs submit a declaration itemizing their attorneys' fees and costs within  
10 fourteen (14) days of the Court's order for the Court's review.

#### 11 IV. CONCLUSION

12 The Non-Compliant ISPs' disregard for this Court's Permanent Injunction  
13 Order cannot be countenanced. Plaintiffs therefore respectfully request that this  
14 Court issue the Compliance Order (a) holding each of the Non-Compliant ISPs in  
15 contempt of court; (b) directing that each Non-Compliant ISP promptly comply with  
16 the Permanent Injunction Order; (c) assessing against the Non-Complaint ISPs the  
17 attorneys' fees incurred by Plaintiffs in making this motion; and (d) directing that any  
18 Non-Compliant ISP that fails to comply with the Permanent Injunction Order within  
19 five (5) court days of receiving notice of the Compliance Order pay to the Court a  
20 fine of \$1,000 per day until such time as that Non-Compliant ISP complies with the  
21 Permanent Injunction Order.

22 DATED: October 17, 2017

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